

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19

FRED MEYER STORES, INC., d/b/a  
QUALITY FOOD CENTERS, INC.<sup>1</sup>

Employer

and

Case 19-RC-15340

UNITED FOOD AND COMMERCIAL WORKERS UNION,  
LOCAL 21, affiliated with UNITED FOOD AND  
COMMERCIAL WORKERS INTERNATIONAL UNION,  
CHANGE TO WIN, CLC

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record<sup>2</sup> in this proceeding, the undersigned makes the following findings and conclusions.<sup>3</sup>

**I. SUMMARY**

Fred Meyer Stores, Inc., d/b/a Quality Food Centers, Inc. ("the Employer") operates numerous retail stores throughout the country and operates a Facilities Unit out of a location in Seattle Washington ("Facilities"), which performs various maintenance, repair, and remodel functions at its retail stores located in the Portland, Oregon and Seattle, Washington metropolitan areas and the Kitsap and Olympic Peninsula areas west of Seattle. United Food and Commercial Workers, Local 21,

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<sup>1</sup> The Employer's name appears as corrected at the hearing.

<sup>2</sup> The Employer and the Petitioner timely filed briefs, which were duly considered.

<sup>3</sup> The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

affiliated with United Food and Commercial Workers International Union, Change to Win, CLC ("Petitioner") filed the instant petition seeking to represent a unit of all full-time and regular part-time employees employed by the Employer at its Facilities Office; excluding all managers and supervisors as defined in the Act.

The Petitioner contends that the wall-to-wall unit of employees that it seeks is an appropriate unit. The proposed unit consists of approximately 21 employees.<sup>4</sup> On the other hand, the Employer asserts that the petitioned-for unit is not appropriate because it includes two cost control clerk/dispatchers and one cost control clerk, whom it contended at the hearing should be excluded from the unit because they are office clerical, rather than plant clerical, employees.<sup>5</sup>

I have carefully reviewed and considered the record evidence, and the arguments of the parties at the hearing and in their post-hearing briefs. Based on the record evidence and the appropriate case law, I find that the petitioned-for unit is an appropriate unit and that the control clerk/dispatchers are plant clerical employees who should be included in the unit. As the evidence regarding the cost control clerk is insufficient to allow for a proper determination as to whether that position should be included in the petitioned-for unit, I will allow that employee to vote subject to challenge.

Below, I have provided a section setting forth the evidence, as revealed by the record in this matter and relating to background information about the Employer's operations and relevant community-of-interest factors. Following the evidence section is my analysis of the legal principles that the Board utilizes in determining the appropriateness of the unit sought in a petition and whether an employee is a plant or office clerical employee. I have also included in separate sections below, details of the directed election and the procedures for requesting review of this decision.

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<sup>4</sup> At hearing, the parties stipulated and I therefore find that the following positions are appropriately included in the petitioned-for unit: lead technicians, assistant technicians, maintenance technicians, energy technicians, industrial technicians, electrical technicians, warehouse drivers, and warehouse parts clerks.

<sup>5</sup> At hearing, the parties stipulated that the following employees are excluded from the petitioned-for bargaining unit: Energy Engineer/Manager, Facilities Director, Maintenance Manager, Technician Field Supervisor, and Capital Project Manager. Although the basis for excluding these individuals is unstated in the record, it appears from the record evidence that the aforementioned individuals are supervisors and/or managers under the Act. Accordingly, in accordance with the parties' stipulation, I shall exclude the aforementioned employees from the unit. The parties also stipulated that the Administrative Assistants should be excluded from the petitioned-for unit. Although the basis for excluding the Administrative Assistants is also unstated in the record, I find that the record evidence is insufficient to establish that the Administrative Assistants share a community of interest with the other employees who are included in the unit. Accordingly, in accordance with the parties' stipulation, I shall exclude the Administrative Assistants from the unit.

## **II. RECORD EVIDENCE<sup>6</sup>**

### **A. The Employer's Operations and Management**

The Employer operates retail stores throughout the country, including approximately 72 stores that are located in the Portland, Oregon, and Seattle, Washington, metropolitan areas, as well as in the Olympic and Kitsap Peninsula areas west of Seattle. In order to provide maintenance, repair, and remodel support for these 72 stores, the Employer operates a Facilities Unit, which is located on First Avenue in Seattle, Washington. That facility is divided into a warehouse area, where tools and surplus equipment and parts are kept, and an office area, where management and other offices are located as discussed below. A door separates the warehouse area from the office area.

The Facilities Unit includes three separate divisions: maintenance, energy, and capital projects. Dan Sloan, the Facilities Director, heads the Unit and reports to the Employer's Group Vice President of Operations, who in turn reports directly to the Employer's president. The Maintenance Manager, Dave Greer, reports directly to Sloan, as do the Capital Project manager and the Energy Manager. Greer is responsible for ensuring that all service work for the stores is completed in a timely and safe fashion, that maintenance technicians are trained to perform their duties and report to work in a timely fashion, and to perform any other tasks he is assigned. In May 2010,<sup>7</sup> the Employer created the position of Technician Field Supervisor and filled it in July. Aron Moreau, who held that position at the time of the hearing, reports directly to Maintenance Manager Greer. Although he did not testify and the record evidence concerning his daily duties is sparse, Moreau is responsible for the "follow up of the day-to-day operations in the field."

All Facilities Unit personnel, including management, attend quarterly review meetings and receive the same benefits such as the corporate 401(k) plan, as well as life, medical, vision, and dental insurance plans.

### **B. The Facilities Unit Employees**

At the time of the hearing, the Employer employed approximately 15 to 17 maintenance technicians in the Facilities Unit, including four lead technicians and one assistant technician. Also employed in the Facilities Unit are one energy technician, one warehouse driver and one warehouse clerk, two cost control clerk/dispatchers, one cost control clerk, and one administrative assistant.

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<sup>6</sup> The Employer presented testimony from its Director of Human Resources; Facilities Director; Maintenance Manager; and a former cost control clerk who also performed the cost control clerk/dispatcher's duties on a temporary basis. Petitioner presented testimony from a maintenance technician, lead technician, and two cost control clerk/dispatchers.

<sup>7</sup> All dates hereafter occurred in 2010 unless otherwise stated.

## **1. Employees Stipulated to be in the Unit**

As noted above, the parties stipulated that the warehouse driver and warehouse parts clerk, as well as all of the technicians, are properly included in the unit.

### **a. Warehouse Driver; Warehouse Parts Clerk**

The warehouse driver is based in the warehouse area of the First Avenue facility. He is responsible for driving to stores to deliver equipment and parts for the technicians to use, and also to pick up items from the stores. The warehouse driver works essentially the same 7 a.m. to 4:30 p.m. shift as maintenance technicians. At the time of the hearing, the Employer had employed Abraham Chavez as its warehouse driver for approximately one week. Maintenance Manager Greer is the warehouse driver's direct supervisor who answers any questions from Chavez. Greer noted that once Chavez has been employed for a longer period of time, he will work with the cost control clerk/dispatchers to deal with issues that arise.

Dustin Blundell has been the Employer's warehouse clerk for approximately the 1 and ½ years prior to the hearing. Like the warehouse driver, the warehouse clerk reports directly to Maintenance Manager Greer and works essentially the same 7 to 4:30 shift.<sup>8</sup> The warehouse clerk earns a little over \$20 per hour.<sup>9</sup>

### **b. Technicians<sup>10</sup>**

The maintenance technicians are responsible for handling the maintenance and repair service requests from the 72 stores. They work out of their homes and drive Employer-provided vans to and from the stores that they are servicing. They receive their assignments from the cost control clerk/dispatchers, who place them on the technicians' laptop computers using the Employer's maintenance database called Verinet. Maintenance technicians will communicate with the cost control clerk/dispatcher regarding the assignments directly by telephone in several circumstances. These circumstances include if further information is required concerning the job assignment; if parts are needed for the job and have not been delivered to the store; and if there are errors in the assignment. Lead maintenance technician Sullivan estimated that he contacts the cost control clerk/dispatchers by telephone at least 4 to 5 times per day. Technician Sisemore stated that he spends at

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<sup>8</sup> The record does not contain any evidence regarding the specific duties of the warehouse clerk. Presumably, the clerk handles those parts that are sent directly to the Facilities Unit warehouse rather than to the stores.

<sup>9</sup> The parties reached a stipulation regarding the warehouse clerk's wage rate. The record is silent regarding the wage rate of the warehouse driver.

<sup>10</sup> Apart from the energy technician, the record testimony refers to all other technicians as "maintenance technicians" regardless of whether their job title was maintenance technician, electrical technician, or industrial technician. Accordingly, my reference to "maintenance technician" refers to all of these categories of technician.

least 20 minutes per day on the phone with the cost control clerk/dispatcher, though not during the May-July period when Greer, Sloan, and cost control clerk Bloomquist handled the clerk/dispatcher duties on a temporary basis. When the technician is unable to handle the job assignment, he is supposed to contact the technician field supervisor Moreau to request a third party contractor to perform the job. Once the request is approved, Greer, Moreau, or the cost control clerk/dispatcher contacts the contractor directly. When the technician completes a job, he logs that completion onto the Verinet system and the job is removed from the queue of jobs listed.

Although the technicians work out of their homes, they regularly go to the Facilities Unit facility on First Avenue to pick up parts that have been delivered to that facility, to retrieve materials from their mailboxes, and to attend meetings and training sessions. Technicians go to that facility as frequently as 2 to 3 times per week. While Bloomquist performed the duties of the cost control clerk/dispatcher during the May to July period, he saw some technicians in the First Avenue facility every day although others he never saw there.

A maintenance technician office in the First Avenue facility is located on the right-hand side hallway of the office area. Technicians use that office, which measures approximately 20 feet by 20 feet, to perform paperwork and to retrieve materials from their mailboxes that are located in that office. The technician office is located across the hall from the offices of Maintenance Manager Greer and the cost control clerk/dispatchers. Technicians also store their larger tools, such as saws, in the warehouse portion of the First Avenue facility. They sometimes use that area for projects, such as building shelves or cutting material. Like the other employees who work at the First Avenue facility, the technicians are free to use the employee break room and restrooms.

The technicians were the only employees identified in the record as wearing uniforms while they perform their duties. The Employer-provided uniform consists of a polo shirt with the Employer's logo on it. Technicians earn between \$21 and \$28 per hour. The recently hired assistant technician, however, earns \$16 per hour. He tends to perform less skilled duties than the other technicians such as pressure washing, delivery of parts, and closing of stores. Technicians work from 7:30 a.m. to 4 p.m., and occasionally work overtime.

Until July, the maintenance technicians reported directly to Maintenance Manager Greer. Due to an organizational change when the new position of technician field supervisor was filled, technicians now report directly to that individual. Maintenance Manager Greer remains responsible, however, for the timely and safe completion of the technicians' work, technicians' training, and the technician's timely reporting for duty.

The only record evidence regarding energy technician Randy Sedy is that he reports directly to the Energy Manager, Jessica Thielmann.

## **2. The Disputed Employees**

As noted above, the parties dispute whether the two cost control clerk/dispatchers and the one cost control clerk are properly included in the unit.

### **a. Cost Control Clerk/Dispatcher**

The cost control clerk/dispatchers are the individuals responsible for dispatching the maintenance technicians to handle the maintenance and service jobs requested by the Employer's 72 stores. After receiving the job order, the cost control clerk/dispatcher decides which technician will perform that job by applying various factors. These factors include the availability of the technician to perform the job; whether he is already performing work at that store or is located in the zone where the job is; and whether the job has high priority. While performing their dispatch duties, the cost control clerk/dispatcher has a dual-monitor work station. One of the monitors displays the Verinet system, which the cost control clerk/dispatcher uses to monitor the queue of jobs ordered by the stores and those being executed or completed by the technicians. The other monitor displays a GPS system, which the cost control clerk/dispatchers use to track the location of the various technicians. The cost control clerk/dispatcher can also order parts and place notes about the job on the Verinet system.

In May, the Employer altered the manner in which the dispatches are made by moving to a single line dispatch system. Previously, the dispatcher would send the call immediately to the technicians assigned to the store, permitting the technician to choose which jobs to perform, but also creating a backlog of assignments. Under the new system, the dispatcher reviews the calls that come in from the stores, places them in a queue, and then cost control clerk/dispatcher transmits one or a group of calls to the technician, based on the geographic location of the call relative to available technicians, and input from Greer or Moreau as to which technician is best able to complete the tasks. In the Employer's view, the change in systems gave the technician less discretion to elect which jobs to start, and increased the input that the cost control clerk/dispatcher and management has in ensuring that the tasks are completed efficiently. As a result of this change, the Employer estimates that the backlog of service calls not completed has decreased from approximately 600, to between 80 and 120.

Also in May, the Employer created the control clerk/dispatcher position and abolished the former dispatcher position. In addition to the dispatch function described above, the Employer added certain cost control duties to the new position. These duties include using three existing computer-based systems (E-Pro, CARS, and CAs) to purchase equipment and supplies for the stores, getting approval for capital funding, and obtaining capital appropriations for purchase of equipment for remodels and store maintenance. The Employer also elected to have two cost control clerk/dispatcher positions whereas there had previously been only one dispatcher.

Despite the testimony regarding the purported creation of the additional cost control duties, the evidence regarding whether either of the cost control clerk/dispatchers has actually performed those duties is negligible. Darcy Wilson, one of the cost control clerk/dispatchers, left for maternity leave when the Employer initiated the above changes and did not return for her first day of work until the day of the hearing. Patricia Schell, the other cost control clerk/dispatcher, was hired approximately one month prior to the hearing date. Schell testified that, during her first three weeks in that position, she has not performed any of the cost control duties outlined above, and has received only one hour of training related to those duties. For the 3 months that Wilson was on maternity leave, former cost control clerk Jonathan Bloomquist performed the cost control clerk/dispatcher duties on a temporary basis; Facilities Director Sloan also performed those duties for 3 or 4 days. Although Bloomquist performed certain cost control duties, such as reviewing invoices and transmitting payroll during this period, those were functions that he continued to perform as the cost control clerk.

Both Schell and Wilson are hourly employees who earn less than \$20 per hour as the cost control clerk/dispatcher. Schell earns \$19.32 per hour, while Wilson earns \$17.39 per hour. The cost control clerk/dispatchers report directly to Maintenance Manager Greer. Prior to her maternity leave, Wilson worked a 7:30 a.m. to 4 p.m. shift. Bloomquist worked a 7 a.m. to 4 p.m. shift while he filled in as a temporary cost control clerk/dispatcher. Although Greer stated that he plans to have Wilson work 7:30 a.m. to 4 p.m. and Schell work from 11:30 a.m. to 8 p.m., those hours were not in effect at the time of the hearing; the cost control clerk/dispatcher Schell worked a 7:30 a.m. to 4 p.m. shift the week before the hearing. Since she was hired as a cost control clerk/dispatcher, Schell has attended one departmental meeting, which was also attended by the technicians.

Testimony differed greatly concerning the amount of interaction that the cost control clerk/dispatchers have with technicians on a daily basis. Facilities Director Sloan and Bloomquist both stated that 25% of the clerk/dispatcher's day is spent interacting with the technicians via computer or phone. By contrast, Darcy Wilson stated that she spent "pretty much all day every day" in touch with the technicians either electronically or by phone. Similarly, Schell testified that, as the cost control clerk/dispatcher, she is in contact with technicians via various media virtually all day, every day. Maintenance Manager Greer did not know what amount of time that the cost control clerk/dispatcher interacts with the technicians on a daily basis, but acknowledged that the level of interaction is essential for maintenance technicians to perform their jobs. In a similar vein, technician Sisemore claimed that the cost control clerk/dispatchers are very essential to the technicians' performance of their jobs on a daily basis; lead technician Sullivan also testified that the cost control clerk/dispatchers' duties are "integral" to the technicians' duties.

#### **b. Cost Control Clerk**

The cost control clerk reports directly to Facilities Director Sloan and is

responsible for assisting the three divisions in the Facilities Unit develop budgets, manage funds and capital appropriations, assist with payroll, and provide business and financial analysis as well as internal financial reporting. The office for the cost control clerk is located down the hallway to the left of the main office area, next to the offices for the cost control clerk for regional construction and other positions with regional construction, all of whom are employed by the Kroger Company.<sup>11</sup>

The current cost control clerk, Corey Johnson, is an hourly employee who earns \$16 per hour. The Employer had employed Johnson as its cost control clerk for one week at the time of the hearing. He did not testify. Jonathan Bloomquist previously held the cost control clerk position from June 2008 until mid July<sup>12</sup>. Bloomquist was also an hourly employee who earned \$23.16 per hour.<sup>13</sup> While Bloomquist was employed as the cost control clerk, he attended management meetings attended by the Maintenance Manager, Energy Manager, and Capital Projects Manager. Bloomquist testified that his specific duties as the cost control clerk included reviewing incoming invoices, checking purchase orders, transmitting payroll for the technicians into the electronic payroll system 2 hours each week, performing credit card audits for technicians, and performing such projects as analyzing certain functions (e.g., plumbing within the maintenance division) to discern adverse trends and determine how to cut waste. While Bloomquist performed some of the cost control clerk/dispatcher duties for the 2 to 3 months noted above, the Employer employed a temporary clerk to perform some of Bloomquist's cost control clerk duties.

The Employer's June 30 job posting for the cost control clerk position lists the essential job duties and tasks associated with the position. They include, *inter alia*, processing and submitting invoices; analyzing maintenance expenses to identify adverse trends; assisting in capital project approval process; using a Kroger computer program to order equipment, request purchase orders, prepare/process invoices; and input and process payroll for Facilities Unit employees.

### **3. Other Employee**

The only other employee in the Facilities Unit is Administrative Assistant Timi Marley. The parties stipulated that her position should be excluded from the unit.

There is little record evidence concerning the administrative assistant's duties and terms and conditions of employment. Marley is responsible for greeting people at

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<sup>11</sup> There is no evidence in the record as to why Kroger Company employees are housed in the same facility.

<sup>12</sup> Bloomquist is currently employed by the Kroger Company as a cost control administrator for its engineering department and works in an office within the same First Avenue facility that houses the Employer's Facilities Unit.

<sup>13</sup> Bloomquist was promoted to the position of cost control lead clerk at some unspecified point during this period, which may account for the discrepancy between his wage rate and Johnson's. The Employer has since abolished that lead position.



the reception area of the office. Her office is located just off the front reception area of the office. If Marley is not available when a visitor enters the office reception area, they use a buzzer to summon the closest person. Marley submits employees' timesheets directly to the Employer's human resources department,<sup>14</sup> and is also responsible for receiving and opening the mail sent to the Facilities Unit and receiving applications for the cost control clerk position.

### **III. LEGAL ANALYSIS**

#### **A. Appropriate Unit – General Legal Standard**

Section 9(b) of the Act does not require that a unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit. Rather, the Act only requires that the unit be "appropriate." *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Parsons Investment Co.*, 152 NLRB 192 fn. 1 (1965); *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7<sup>th</sup> Cir. 1951). A union is, therefore, not required to seek representation in the most comprehensive grouping of employees unless "an appropriate unit compatible with that requested does not exist." *P. Ballantine & Sons*, 141 NLRB 1103 (1963); *Bamberger's Paramus*, 151 NLRB 748, 751 (1965); *Purity Food Stores, Inc.*, 160 NLRB 651 (1966). Thus, there is ordinarily more than one way in which employees of a given employer may appropriately be grouped for purposes of collective-bargaining. *General Instrument Corp. v. NLRB*, 319 F.2d 420, 422-3 (4<sup>th</sup> Cir. 1962), *cert. denied* 375 U.S. 966 (1964); *Mountain Telephone Co. v. NLRB*, 310 F. 2d 478, 480 (10<sup>th</sup> Cir. 1962).

The Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for-unit. The burden is on the party challenging the unit to show that the petitioned-for bargaining unit is inappropriate; if the unit sought by the petitioning labor organization is appropriate, the inquiry ends. *P.J. Dick Contracting, Inc.*, 290 NLRB 150, 151 (1988); *Bartlett Collins Co.*, 334 NLRB 484 (2001). In determining whether a petitioned-for-unit is appropriate, the Board examines such factors as mutuality of interests in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees, and functional integration. *Brand Precision Svcs.*, 313 NLRB 657 (1994); *The Boeing Company*, 337 NLRB 152 (2001). The Board generally looks to the totality of the circumstances or the overall community of interest in making unit determinations. *Johnson Controls, Inc.*, 322 NLRB 669 (1996). A petitioned-for plant wide unit is presumptively appropriate under the Act. *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962). Petitioner here seeks such a plant-wide unit.

#### **B. Plant and Office Clericals—General Legal Standard**

The Board has recognized that the "distinction between office clericals and plant clericals is not always clear." *Hamilton Halter Co.*, 270 NLRB 331 (1984). In determining whether an employee is a plant clerical, the Board's "test generally is

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<sup>14</sup> The record is otherwise silent with respect to her duties with respect to the timesheets or how the timesheets are used in the payroll process.

whether the employees' principal functions and duties relate to the production process, as distinguished from general office operations." *Caesar's Tahoe*, 337 NLRB 1096, 1098 (2002). Plant clericals are customarily included in a production and maintenance unit because they generally share a community of interest with the employees in the plant wide unit. *Kroger Co.*, 342 NLRB 202 (2004); *Caesars Tahoe*, 337 NLRB 1096 (2002). Typical plant clerical duties are directly related to facilitating the production process such as maintenance of inventories, transcription of sales orders, and ordering supplies. *Kroger Co.*, 342 NLRB 202 (2004). By contrast, typical office clerical duties are billing, payroll, phone, and mail. *Dunham's Athleisure Corp.*, 311 NLRB 175 (1993).

### **C. Cost Control Clerk/Dispatchers Are Plant Clericals**

Contrary to the Employer, I conclude that the cost control clerk/dispatchers should be included in the petitioned-for unit. The record reveals that the duties of the cost control clerk/dispatcher play an indispensable role in the successful completion of the work for which the Facilities Unit is responsible, *i.e.*, the maintenance and service support functions for the 72 stores. Thus, the cost control clerk/dispatcher determines which technicians are best able to perform a repair or maintenance request from the stores and answers any questions about the job that may arise. The cost control clerk/dispatcher keeps track of the dispatchers' location and job progress so that she knows which technicians are available to handle additional calls or any emergencies that arise. As even Maintenance Manager Greer recognized, the maintenance technicians could not successfully perform their jobs without their interaction with the cost control clerk/dispatchers. Such dispatch duties have been found by the Board to be plant clerical in nature. See, *e.g.*, *Caesar's Tahoe*, 337 NLRB 1096, 1098 (2002) (dispatching duties that consist of answering requests for a maintenance engineer, determining which engineer is qualified to handle the repair, and sending engineer to appropriate location, are plant clerical functions); *Colonial Lincoln Mercury Sales*, 197 NLRB 54, 64 (1972), *enfd.* 485 F.2d 455 (5<sup>th</sup> Cir. 1973) (dispatcher who receives repair orders and assigns work to mechanics based on who is qualified to do work or who is available, is a plant clerical).

In addition to the cost control clerk/dispatchers' role in the maintenance and support functions of the Facilities Unit, several other factors demonstrate that they share a community of interest with the other employees in the petitioned-for unit. For example, the cost control clerk/dispatchers share common hours with the maintenance technicians, have frequent contact with the technicians by phone or computer, and as noted above, their duties are functionally integrated with those of the technicians to successfully complete the maintenance and repair orders.

The Employer's arguments that the cost control clerk/dispatchers ought to be excluded from the Unit on the basis that they operate from the Employer's First Avenue location, rather than one or all of the 72 stores are unpersuasive. First, I note that, given the employees' dispatching duties, it stands to reason that they would operate out of the Employer's central location, rather than at one of the stores. Regardless, the record is clear that no unit employees work exclusively from any one store or set of stores. To the contrary, technicians are dispatched from their homes to the stores

where they are needed, their work sites randomly dictated by the vagaries of maintenance schedules and equipment malfunctions. Thus, while technicians work in the stores, it is misleading to suggest that the stores, alone, constitute the “plant” in this case. Indeed, the single common facility for all employees in the petitioned-for unit is the Employer’s First Avenue location, which technicians regularly visit for work-related reasons. In any event, dispatchers have regular, daily contact with technicians electronically and/or by telephone. In these circumstances, therefore, the fact that cost control clerk/dispatchers perform their dispatch functions from a central location rather than side-by-side with technicians in the field does not detract from their essential role in the Employer’s maintenance and support functions, nor does it otherwise require the cost control clerk/dispatchers’ exclusion from the petitioned-for unit.<sup>15</sup>

The Employer’s assertion that the cost control clerk/dispatchers ought to be excluded from the petitioned-for unit because they might eventually possess and/or exercise authority to assign and direct technicians using independent judgment is likewise unpersuasive. The burden of proving supervisory status lies with the party asserting that such status exists. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2001). The Employer has not met its burden here; indeed, the Employer admits that the positions are “too new” and, therefore, the record is insufficient to establish that the cost control clerk/dispatchers are supervisors within the meaning of Section 2(11). Regardless, the Employer relies on managers’ speculative testimony, and Bloomquist’s testimony regarding his management experience in a different position, to argue that the cost control clerk/dispatchers “will” eventually exercise independent judgment to assign and direct technicians. But that testimony is directly at odds with the testimony of Wilson and Schell – and the Employer’s admission in its brief – that they do not exercise independent judgment. Rather, as the Employer admits, the jobs are rather straightforward and involve carrying out Greer’s general guidelines for assignment. In these circumstances, I reject the Employer’s assertion that the cost control clerk/dispatchers ought to be excluded from the petitioned-for unit as putative supervisors.

#### **D. The Cost Control Clerk May Vote, Subject to Challenge**

The record is insufficient to establish whether the cost control clerk position is a plant clerical position that should be included in the petitioned-for unit, or an office clerical position that should be excluded. As the Employer points out, the cost control clerk assists with payroll, reviews and processes invoices, and checks purchase orders;

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<sup>15</sup> In this regard, the Employer’s reliance on *Container Research Corporation*, 188 NLRB 586, 587 (1971) and *J. Ray McDermott & Co., Inc.*, 240 NLRB 864, 869 (1979) is misplaced. As the Board noted in those cases, the employees’ functions, rather than their work site, dictate their inclusion or exclusion from a given unit. For example, in *Container Research*, the employee’s “principal functions and duties relate[d] to the general office operations,” thus, the amount of time she spent in the production area was not dispositive. Likewise, in *J. Ray McDermott*, the Board found employees to be plant or office clericals based on their primary functions and duties, which were reflected in their work sites. Here, regardless of the cost control clerk/dispatchers’ location, their primary functions and duties relate to the Employer’s service operations rather than to office clerical tasks.

these duties are traditionally associated with office clerical work. On the other hand, the Union also correctly contends that the cost control clerks perform functions akin to plant clerical work, such as production tracking functions; the cost control clerks interact and interchange with the cost control clerk/dispatchers, earn an hourly wage and share the same benefits as cost control clerk/dispatchers, and share access to the same break room and bathrooms as warehouse employees, dispatchers, and maintenance technicians. With regard to the cost control clerk position, I find the record does not contain sufficient information to allow for a proper determination; therefore, I will allow Corey Johnson to vote subject to challenge.

#### **IV. CONCLUSION**

Based on the foregoing and the record as a whole, I find the Employer's two cost control clerk/dispatchers are plant clerical employees who share a community of interest with the employees included in the unit. I further find that the evidence demonstrates that the cost control clerk should be excluded from the unit as an office clerical employee.

For these reasons, and in view of the record evidence, I shall direct an election in the following appropriate Unit:

All full-time and regular part-time employees employed by the Employer working at, or out of its 3663 1<sup>st</sup> Avenue S., Seattle, Washington location, excluding all office clerical employees, managers, guards, and supervisors as defined in the Act.

There are approximately 21 employees in the unit found appropriate.

#### **V. DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also included are any employees who regularly averaged 4 or more hours per week for the last quarter immediately preceding the issuance of this decision. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been

discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 21 AFFILIATED WITH UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, CHANGE TO WIN, CLC.

#### **A. List of Voters**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29<sup>th</sup> Floor, Seattle, Washington 98174, on or before **September 16, 2010**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of four copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

#### **B. Notice Posting Obligations**

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### C. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **September 23, 2010**. The request may be filed through E-Gov on the Board's web site, [www.nlr.gov](http://www.nlr.gov), but may not be filed by facsimile.<sup>16</sup>

**DATED** at Seattle, Washington, this 9th day of September, 2010.



Richard L. Ahearn, Regional Director  
National Labor Relations Board, Region 19  
2948 Jackson Federal Building  
915 Second Avenue  
Seattle, Washington 98174

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<sup>16</sup> To file a request for review electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the E-Gov tab. Then click on the E-filing link on the menu. When the E-file page opens, go to the heading Board/Office of the Executive Secretary and click the "File Documents" button under that heading. A page then appears describing the E-filing terms. At the bottom of the page, check the box next to the statement indicating that the user has read and accepts the E-File terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the "Submit Form" button. Guidance for E-Filing is contained in the attachment supplied with the Regional office's original correspondence in this matter and is also located under "E-Gov" on the Board's website, [www.nlr.gov](http://www.nlr.gov).